IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
LETTERS PATENT APPEAL NO. 26 OF 2006
IN
WRIT PETITION NO.8439 OF 2005
along with
CIVIL APPLICATION NO.31 OF 2006

Shri Gorakh Mahadev Pawar, .. Appellant.
Vs
Shri Dynandev Yashwant Jadhav, .. Respondent.

Mr Machhindra Patil, for the appellant.

CORAM : SMT RANJANA DESAI & D.B.BHOSALE,JJ.
DATE : 15.02.06.
PC:

1. The appellant is the original respondent who has filed Misc.Application No.39 of 2000 in the District Court, Sangli under section 6 of the Hindu Minority and Guardianship Act for custody of his minor children. The appellant raised a point regarding jurisdiction. His application came to be dismissed on 30.7.05. Being aggrieved by the said dismissal order, the appellant has filed the writ petition in this Court. By the impugned order, the learned Single Judge dismissed the said petition and hence this LPA.

2. We have heard the learned counsel for the appellant and perused the order of the learned Single Judge. In our opinion, the learned Single Judge has correctly held that there is no infirmity in the impugned order passed by the trial Court. Admittedly, there was no application made by the original petitioner for any interim relief.

Therefore, no preliminary issue could have been framed under section 9A of the Code of Civil Procedure, 1908 ("CPC", for short). Reliance placed by the learned counsel for the appellant on the judgment of this Court in Manubhai Vadilal Shah Vs. Hiralal Karsondas Bhakta and ors, 2000 (1) ALL MR 5, is misplaced because in that case the Court was dealing with a case where an injunction application was filed and the defendant had raised objection to jurisdiction. It is in this context that section 9-A of the CPC was considered. Such is not the case here. Here the learned Single Judge has rightly held that the issue as regards the jurisdiction is a mixed question of law and fact and can be decided after leading evidence. In the circumstances, no interference is called for. The Letters Patent Appeal along with the civil application is dismissed.

(D.B.BHOSALE, J.) **(SMT.RANJANA DESAI,J.)**